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No. 89-1080 (15)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

THE BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA,

Petitioner,

v.

ROBERT L. DOWELL, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND THE CITIZENS' COMMISSION ON CIVIL RIGHTS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Amici curiae will address this question:

Where school segregation has substantially contributed to housing segregation, must the school district show that it has taken effective action to correct the housing "vestiges" of the district's wrong before the district's remedial obligation is fulfilled?

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INTEREST OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

The National Association for the Advancement of Colored People ("NAACP") is a non-profit membership corporation with substantial numbers of members nationwide. The NAACP has chartered affiliates in the State of Oklahoma and in the other forty-nine states. The principal goal of the NAACP is to insure the political, educational, social, and economic equality of African-

American citizens of the United States and to remove all barriers of racial discrimination.

This case, involving as it does the question of when a school system may properly be deemed "unitary" and, consequently, relieved of its obligation to remedy school segregation, when the vestiges of discrimination, including housing segregation, remain, is of paramount concern to the NAACP. *Amicus* NAACP has been in the forefront of litigation seeking effective desegregation of public school systems since *Brown v. Board of Education*, 347 U.S. 483 (1954). The NAACP has been particularly concerned about the intersection of housing and school segregation and has undertaken significant litigation in this area such as the *Yonkers* case. Because this case is likely to have a significant impact on the NAACP's on-going efforts to achieve desegregation, the NAACP is participating as *amicus curiae*.

INTEREST OF THE CITIZENS' COMMISSION ON CIVIL RIGHTS

The Citizen's Commission on Civil Rights is a bipartisan group of former officials who have served in the federal government in positions with responsibility for equal opportunity and civil rights. Its membership includes two former Secretaries of the Department of Health, Education and Welfare (now Department of Education) and several former officials of the Department of Justice, the two federal agencies with prime responsibility for enforcing constitutional and statutory rights to equal educational opportunity.[1] The Commis-

[1] The members of the Commission include Arthur Flemming, Chair; William L. Taylor, Vice Chair; Birch Bayh, William H. Brown, Frankie Freeman, Erwin N. Griswold, Aileen C. Hernandez, Fr. Theodore M. Hesburgh, Ray Marshall, William M. Marutani, Eleanor Holmes Norton, Elliot L. Richardson, Rabbi Murray Saltzman and Harold M. Tyler.

sion was founded in 1982 in response to governmental action that put into question the basic foundations of civil rights policy as it had operated since the enactment in the 1960's of laws providing basic protections. Since its establishment, the Commission has monitored civil rights enforcement, examined important policy issues affecting equality of opportunity, and published reports on a broad range of civil rights issues.

In several of its reports, the Commission has examined issues concerning school and housing segregation. These include a 1982 study of school desegregation remedies which examined social science evidence on the educational benefits of school desegregation; a 1983 study of housing segregation in large cities, reviewing federal housing enforcement efforts by the Departments of Justice and Housing and Urban Development; and a 1989 study analyzing the record of civil rights enforcement by federal agencies during the 1980's and providing a comprehensive series of recommendations for policy changes to ensure effective implementation of civil rights laws, including recommendations concerning findings of "unitary status" in school desegregation cases.

The present case raises important questions concerning the termination of a school board's obligation to remedy segregation. In light of both the Commission's continuing interest in the issue of when a school district should be deemed to have achieved "unitary status," and the Commission's expertise on housing discrimination and school segregation, amicus is vitally interested in the determination of the issues in this case. In addition, amicus believes it can be of service by bringing to the attention of the Court the important relationship between housing segregation and school segregation.[2]

[2] Pursuant to Rule 37 of the Rules of this Court, the parties have consented to the filing of this brief. Copies of the letters of consent from the parties have been filed with the Clerk of the Court.

STATEMENT

The schools of Oklahoma City were intentionally segregated by race for at least three generations before this lawsuit. 219 F.Supp. 427, 431-34 (W.D. Okla. 1963) ("at all times since statehood [in 1907] the Oklahoma City School District was completely and fully segregated"). Housing was also segregated, partly by state law and state enforcement of restrictive covenants, but partly as the result of the longstanding school segregation. *Id.* at 433-34; 244 F.Supp. 971, 975-77 (W.D. Okla. 1965). Even when explicitly-sanctioned school segregation ended, the establishment of neighborhood schools resulted in virtually complete segregation of blacks, particularly in the central east part of the City. The area of black residential concentration grew due to the district's student assignment, transfer, and other policies. *Id.*

In 1972, the District Court ordered that the schools be desegregated and approved a comprehensive systemwide plan. 338 F.Supp. 1256 (W.D. Okla.), *aff'd*, 465 F.2d 1012 (10th Cir.), *cert. denied*, 409 U.S. 1041 (1972). This followed the District's "unpardonable recalcitrance," *id.* at 1271, and "emasculat[ion]" of prior plans. *Id.* at 1263. Five years later the Court terminated jurisdiction over the lawsuit but did not vacate the prior injunction. No. CIV-9452, slip op. (W.D. Okla. Jan. 18, 1977); *see* 795 F.2d 1516, 1518 (10th Cir. 1986), *cert. denied*, 479 U.S. 938 (1987). A dozen years after the school district's desegregation effort began, the district essentially returned to neighborhood elementary schools. Because much residential segregation remained, many schools, particularly in the central east section, returned to their prior segregated status. 677 F.Supp. 1503, 1506-10 (W.D. Okla. 1987), *rev'd*, 890 F.2d 1483 (10th Cir. 1989).

INTRODUCTION AND SUMMARY OF ARGUMENT

This brief addresses the following issue: Where school segregation has substantially contributed to housing segregation, must the school district show that it has taken effective action to correct the housing vestiges of the district's wrong before the school system's remedial obligation is fulfilled? The answer, as a matter of common sense and the Court's decisions, is yes. The answer ought not to be altered by the fact that effective action to remedy the segregative housing effects of school segregation might be a difficult or time-consuming process. To hold otherwise, especially in the context of a school district's effort to return to "neighborhood schools," which will be racially segregated by virtue of earlier discriminatory practices, would be to render the whole desegregation process unavailing. School segregation does in fact cause residential segregation, and both can—and must—be remedied.

ARGUMENT

I. THE COURT HAS FIRMLY ESTABLISHED THAT RESIDENTIAL SEGREGATION IS A VESTIGE OF RACIALLY-DUAL SCHOOL SYSTEMS

The Court realized early in the history of *Brown* that school segregation frequently contributes to residential segregation and that segregated neighborhoods typically produce segregated schools. Each form of segregation is both the root and the branch of the other. The mutually-causative nature of the two forms of segregation means that addressing one can help address the other but that correcting one might not immediately correct the other. As the Court noted in *Swann*, school assignments are, in isolation, "short-run" problems, but they may "promote segregated residential patterns which . . . lock the school system into the mold of separation of the races." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 21 (1971). In *Keyes v. School*

District No. 1, 413 U.S. 189 (1973), the Court observed that school segregation:

> ha[s] the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.

Id. at 202-03.

In the Court's most recent case in this area, *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979), the Court agreed that "school segregation is a contributing cause of housing segregation." *Id.* at 465 n.13. The decision of the District Court in *Columbus*, affirmed and in this regard referred to approvingly by this Court, described the interaction of school assignments and residential choice as a "segregative snowball." [3] Numerous lower

[3] In *Columbus*, the Court was persuaded by evidence that the District Court summarized as follows:

> The racial identification of the school in turn tends to maintain the neighborhood's racial identity, or even promote it by hastening the movement in a racial transition area. White families tend to cease migrating into such a neighborhood, and tend to move out of the area.
>
> The Court has received considerable evidence that the nature of the schools is an important consideration in real estate transactions, and the Court finds that the defendants were aware of this fact. The defendants argue, and the Court finds that the school authorities do not *control* the housing segregation in Columbus, but the Court also finds that the actions of the school authorities have had a significant impact upon the housing patterns. The interaction of housing and the schools operates to promote segregation in each. It is not now possible to isolate these factors and draw a picture of what Columbus schools or housing would have looked like today without the other's influence. I do not believe that such an attempt is required.
>
> I do not suggest that any reasonable action by the school authorities could have fully cured the evils of residential segregation. The Court could not and would not impose such a duty upon the defendants. I do believe, however, that the Columbus defendants could and should have acted to break the segregative snowball created by their interaction with housing. That is, they could and should have acted with an integrative rather than a segregative influence upon housing; they could and should have been cautious concerning the segregation influences that are exerted upon the schools by housing. They certainly should not have aggravated racial imbalance in the schools by their official actions.

429 F.Supp. 229, 259 (S.D. Ohio 1977).

federal courts in school desegregation cases have grappled with the issue of school segregation and its impacts on residential segregation, frequently finding school districts responsible for influencing homebuyers' decisions concerning where to move and exacerbating segregated housing patterns.[4]

The United States suggests that, where, as here, intentional school segregation substantially contributed to residential segregation, the courts should presume that remedial efforts "over a continuous period" in the school-related areas set forth in *Green* have remedied all school-related housing segregation. Brief for the United States as Amicus Curiae at 28. Although not directly stated, the facts of this case suggest that the period that the United States would require is no more than a dozen years or so, even where the intentional school segregation lasted four or five times as long.

This approach turns upside down the common sense rules that the Court has recognized over the years with

[4] *See, e.g., United States v. Yonkers Board of Education*, 624 F.Supp. 1276 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 2821 (1988); *United States v. Board of School Commissioners*, 573 F.2d 400, 408-09 n.20 (7th Cir. 1978); *NAACP v. Lansing Board of Education*, 559 F.2d 1042, 1049 n.9 (6th Cir. 1977); *Evans v. Buchanan*, 393 F.Supp. 418, 436-37 (D. Del.), *aff'd*, 423 U.S. 963 (1975); *Hart v. Community School Board of Brooklyn*, 383 F.Supp. 699, 706 (E.D.N.Y. 1974), *aff'd*, 512 F.2d 37 (2d Cir. 1975).

respect to burdens of proof and presumptions in desegregation cases. It understates the link between school and residential segregation—and desegregation as well. And even where, as here, the link has been proven in fact, the position of the United States places on the innocent victims the burden of proving that an effect caused by many years of school segregation was not undone by a relatively few years of school desegregation. Satisfying that burden would be an expensive and unnecessary task, even though in almost every case it could be done if the resources were available. The fact that a long and painful constitutional violation results in conditions that may require a remedy of similar duration is no justification for effectively denying the remedy to innocent victims.

Changing the pattern of school assignments does not quickly break the mold of separation that such assignments have helped to create. Housing patterns contributed to by generations of school segregation will not be undone by a few years of desegregated school assignments. White (or black) parents are more likely to move into a black (or white) neighborhood if they have a long-term guarantee that their children will not be racially isolated in school while the much slower process of neighborhood integration continues. That level of comfort will not arise, however, if the commitment to desegregated schools is only for a limited time, or is apparently not in good faith, and many years must pass before the cumulative effect of such individual parental decisions can make a significant difference in vestigial residential patterns. In fact, if parents perceive that the commitment to school desegregation is transitory or insincere, they will tend to make the same housing decisions as if the schools still were intentionally segregated. Although explicit school segregation will have ended, continued residential segregation will be perpetuated.

A presumption, stated or otherwise, that a few years of effective school desegregation provide a complete constitutional remedy would make the effort of desegregating schools a futile and tragic one in those cities in which segregated schools and neighborhoods have caused and reinforced one another over a period of time spanning decades. Once the school desegregation effort ended, segregated neighborhoods once again would have segregated schools. The prior intentional school segregation, which caused a substantial part of the initial residential segregation, would still be causing a substantial part of the current school segregation. For a few years minority children would have attended desegregated schools, but future generations of minority children would be locked into schools that are segregated in fact, and whose condition arose in substantial part by virtue of intentional segregation in the past. Due to segregated schools, many parents of young children will make segregative housing choices or decline to make desegregative ones.

The end result would vary little from that under the "freedom of choice" plans that the Court confronted in *Green v. County School Board*, 391 U.S. 430 (1968). There the Court realized that ending explicitly segregative assignments would mean nothing if other "vestiges" of the prior system remained and caused a facially neutral assignment system to perpetuate prior state-imposed segregation. The Court, fully acknowledging the difficulty of the task, ordered that action be taken forthwith to eliminate the prior system and *all* of its effects. As the Court held in *Swann*, the fundamental objective is to eliminate "all vestiges" and to do so "root and branch," 402 U.S. at 15 (quoting from *Green*, 391 U.S. at 437-38). The six indicia of the dual system mentioned in *Green*—student assignment, faculty, staff, transportation, extra curricular activities, and facilities—are "*among* the most important indicia of a segregated system," *id.* at 18 (emphasis added), but the vestiges requiring elimination may include other critical areas:

> Discriminatory student assignment policies can themselves manifest and breed other inequalities built into a dual system founded on racial discrimination. Federal courts need not, and cannot, close their eyes to inequities, shown on the record, which flow from a longstanding segregated system.

Milliken v. Bradley (II), 433 U.S. 267, 283 (1977).

Ending improper motivation and explicit segregation in student assignments can be said to create an immediate form of "unitariness," but if that were enough, there would be no need for consciously desegregative assignments for any extended period of time. The Court has recognized, however, that the process of eliminating segregation and its injurious effects, "root and branch," takes many years. *Green*, 391 U.S. at 435-38; *Raney v. Board of Education*, 391 U.S. 443 (1968); *Swann*, 402 U.S. at 31-32. Consciously desegregative student assignments are necessary to end indirect effects such as the identification of certain schools as black or white and housing segregation. Those long-term effects of school segregation on parental/homeowner choice can be remedied only by a long-term and good faith commitment to desegregative student assignments as well as affirmative remedies designed to reverse years of segregated housing patterns.

II. EFFECTIVE SCHOOL DESEGREGATION, WITH PERSEVERANCE, CAN REMEDY HOUSING DESEGREGATION

The process of creating segregated schools and neighborhoods was, and is, slow and enduring. School desegregation has itself been a slow process, and the effect on housing patterns is much slower. Numerous examples, however, show that schools can be a cure for, as well as a cause of, segregated neighborhoods and that residential segregation is not as intractable a problem as might be supposed.

It is by now well known that desegregation of schools, by itself, can have a positive effect on housing desegregation, as indeed was recognized by the District Court here. 677 F.Supp. at 1513.[5] Just as school segregation causes housing segregation, studies and experiences confirm the common sense notion that if parents need not fear the racial isolation of their young children in school, they are more apt to make, or continue, desegregative housing choices and less apt to make segregative ones.

School systems can further speed the residential desegregation process by offering incentives and cooperating with other entities. The Pearce study found that cities with metropolitan school desegregation plans enjoyed increased residential desegregation, leading to de-

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[5] School desegregation can have long-term effects on residential segregation, but only if kept in effect for substantial periods of time. An extensive longitudinal study in Hartford, Connecticut, begun in 1966, found that when black students attend desegregated schools they are more likely as adults to live in non-segregated areas than their counterparts who attended segregated schools. *See* Crain, et al., *Finding Niches: The Long Term Effects of a Voluntary Interdistrict School Desegregation Plan* (New York Teachers College 1986). When a school district is desegregated there is no pressure for whites with young children to move out of racially mixed neighborhoods, and it is less likely for real estate agents to engage in racial steering to segregate neighborhoods. *See* Hawley, et al., *Assessment of Current Knowledge About the Effectiveness of School Desegregation Studies*, Vol. 1, pp. 51-60 (Institute for Public Policy Studies, Vanderbilt University, 1981). Another study notes that real estate brokers typically use the racial characteristics of public schools to identify the neighborhood racially, and then market houses in neighborhoods along racial lines. Once schools are no longer earmarked as white or black, racial barriers in housing are lowered. *See* Pearce, *Breaking Down Barriers: New Evidence on the Impact of Metropolitan School Desegregation on Housing Patterns* (Nov. 1980) (cited in *"There is No Liberty"* at 83-84 (Citizens Commission on Civil Rights 1982). *See also* Orfield, *Toward a Strategy for Urban Integration* (1981); Pearce, et al., *The Effect of School Desegregation on the Rate of Residential Desegregation in Large Central Cities* (unpublished 1990).

creased need for busing.[6] In Louisville[7] and a growing number of other cities, the school system offers a guarantee of a neighborhood school to families who move into a residential area in which they are in the minority.[8] In Milwaukee, Cleveland, and Seattle, school systems and state agencies have cooperated to make federal tax benefits, *see* I.R.C. §§ 25(c), 42, & 143, available to families with school-age children who make desegregative housing choices. In Palm Beach County, Florida, the school system works with developers of new housing to encourage desegregation of housing so that new schools will not be one-race. In many urban areas former school sites can be developed for mixed-income family housing. School systems also can encourage mitigation of the adverse impacts of school and residential segregation by city and county governments charged with zoning, planning, and development approval. They can assure awareness among realtors, landlords, housing authorities, recipients of HUD vouchers and Section 8 certificates, and lenders of incentives for desegregative residential choices and of the positive economic effects of stable, desegregated neighborhoods. These and other voluntary, inexpensive techniques are limited only by the imagination and by the degree of school officials' good-faith commitment to eradicating the proven effects of past intentional segregation.

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[6] *See* Pearce, *Breaking Down Barriers, supra*, note 5.

[7] For a discussion of the impact of the exemption from busing for those moving into desegregated areas in Louisville, see Kentucky Commission on Human Rights, *Six Ways to Avoid Busing* (1975); Kentucky Commission on Human Rights, *Housing and School Desegregation Increased by Section 8 Moves* (1980).

[8] This obvious strategy is ignored in too many cities. One sad example is Norfolk, Virginia, where pressure to dismantle a plan arose in part from black parents' dissatisfaction with moving to an integrated area, only to be inflexibly bused back to the black area instead of being permitted to attend a closer school.

III. THE COURT'S REMEDIAL STANDARDS REQUIRE THAT EFFECTIVE ACTION BE TAKEN TO REMOVE HOUSING VESTIGES OF SCHOOL SEGREGATION BEFORE A DESEGREGATION PLAN CAN BE UNDONE

School segregation can, as it did here, cause residential segregation, which in turn leads to further school segregation. The "segregative snowball," however, can be stopped and even reversed. Accordingly, the proper remedial rule is unremarkable. Where school segregation has substantially contributed to residential segregation the school district must show that it has remedied that "vestige." If some schools remain segregated in fact under a neighborhood assignment policy, then the district bears a "heavy burden" of proving that the segregation has not been caused or contributed to by the earlier constitutional violation. *See Swann*, 402 U.S. at 26; *Keyes*, 413 U.S. at 203, 211, 214. As the Court held in *Dayton* and *Columbus*, it is not enough for the school board to abandon discriminatory purpose, the board "has an affirmative responsibility to see that pupil assignment policies and [other] practices 'are not used and do not serve to perpetuate or re-establish the dual school system.'" *Dayton v. Brinkman (II)*, 443 U.S. 526, 538 (1979) (quoting *Columbus*, 443 U.S. at 460). That standard applies regardless of the specific effect that was caused and regardless of remoteness in time of the violation:

> If the actions of school authorities were to any degree motivated by segregative intent and the segregation resulting from those actions continues to exist, the fact of remoteness in time certainly does not make these actions any less intentional.

Keyes, 413 U.S. at 210-11.

It is not necessary for the Court to decide now what quantum of residential desegregation must occur before a school district can meet its burden of showing that it

has taken effective action to deal with the housing vestiges of a racially dual school system. Nor is it incumbent on the Court or on lower federal courts to undertake the impossible task of ascertaining how much residential segregation might remain if the effects of prior discriminatory practices in education were removed. Far more can be accomplished during school desegregation plans to eliminate vestigial housing segregation than has been achieved in Oklahoma City.

If there is to be any presumption or burden-shifting in *favor* of the school district, it should only be if the district entered into a desegregation plan that had no suggestion of future termination (short of the undoing of residential patterns), carried out that plan aggressively and in good faith, and implemented it for an extensive period of time. Absent all of these factors, the school system should be required to prove in fact that any remaining residential segregation in the area affected by prior school segregation is somehow unrelated to that prior school segregation. The requirements of an indefinite term at the outset and of good faith implementation are necessary because otherwise parents will not make residential choices in light of current desegregated school assignments. An extensive period of time is necessary because many separate parental decisions must occur before the cumulative effect is significant.

In this case, the record shows that the housing segregation vestige is not "theoretical[]", Brief for the United States as Amicus Curiae at 27, but real. The District Court found in 1965 that:

> inflexible adherence to the neighborhood school policy in making initial assignments serves to maintain and extend school segregation by extending areas of all Negro housing, destroying in the process already integrated neighborhoods and thereby increasing the number of segregated schools.

244 F.Supp. at 976-77. After continued "unpardonable recalcitrance" by the Board, 338 F.Supp. at 1271, and the Board's "emasculat[ion]" of prior plans, *id.* at 1263, a comprehensive systemwide remedy was ordered in 1972, eighteen years after *Brown* and sixty-five years after statehood. "The Defendant School Board shall not alter or deviate from the New Plan without the prior approval and permission of the court." *Id.* at 1273. Although the District Court recognized in 1985 and 1987 that school desegregation had "fostered the neighborhood integration which has occurred in Oklahoma City", 677 F.Supp. at 1512; *see also* 606 F.Supp. 1548, 1551 (W.D. Okla. 1985), that integration came from blacks moving into formerly white areas. Black residential areas that were "the result of laws requiring segregation in housing and education", 244 F.Supp. at 976, and that had expanded through 1972 due to the Board's continued recalcitrance, are still virtually one-race.

The District Court's statement in 1987 that "[f]rom the time of this court's original decision in this case over 25 years ago, the Oklahoma City Board of Education has taken absolutely no action which has caused or contributed to the patterns of the residential segregation which presently exists in areas of Oklahoma City," 677 F.Supp. at 1512, is thus at variance with its earlier opinions: The area of black residential concentration that resulted from the Board's policies is virtually untouched, in spite of the positive effects of school desegregation on housing desegregation elsewhere in the system. The District Court's determination that the Board "is not responsible for the present state of residential segregation in Oklahoma City," *id.* at 1512, is clearly erroneous in its disregard of the plain facts and the governing principles reviewed above. The relationship between past segregative acts and present segregation is in no sense of the words "attenuated" or "remote"; rather, it is direct and continuing.

In sum, for the better part of a half century prior to *Brown* public officials in Oklahoma City pursued policies that produced racial segregation in schools and housing. After *Brown*, until 1972, those officials took no effective action against school and housing segregation. From 1972 until 1985, the school board pursued more effective school remedies, but none of the affirmative housing measures of the kind described earlier. Since 1985 there has been regression as to school segregation.

Accordingly, whether or not—as respected *amici* suggest, *see* Brief of United States as Amicus Curiae at 22; Brief of The Council of the Great City Schools, et al., as Amicus Curiae at 11-14—"good faith" is an appropriate measure of remedial efforts, the actions taken in Oklahoma City has not persisted over a long enough period to ameliorate the longstanding violations. Here, although the district have been on explicit notice for twenty-five years or more than its policies and practices exacerbated residential segregation, the record reflects little or no effort on the part of the district to engage in any of the types of activities described above that would have accelerated elimination of school-related housing segregation. Surely this failure is significant in gauging the district's good faith.

* * * *

In recent years, much of the debate relating to our nation's sad legacy of discrimination has focused on affirmative action. That debate would ring hollow indeed if the Court were now to discontinue even the effort to provide a complete remedy for actual constitutional violations. The Court has required that the Constitution be vindicated even though the remedial course is difficult, unpopular, and lengthy. The path has been temporarily more difficult and time-consuming each time there was a belief that the Court might hesitate and perhaps turn back. Much is left to be done to remedy the conditions that took years to create. The Court should not look away from the effect of schools on housing.

If "[e]ach instance of a failure or refusal to fulfill [the] affirmative duty [to eliminate racial discrimination "root and branch"] continued the violation of the Fourteenth Amendment," *Columbus*, 443 U.S. at 459, then the Court, like the Board of Education of Oklahoma City, is duty-bound to address housing segregation that resulted in substantial part from school segregation.

The Court has steered a difficult but steady course over 35 years in an effort to make *Brown* a living reality for school children. That effort has yielded positive results. It ought not to be abandoned now, when the deleterious effects of the official regime of segregation persist.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the Court of Appeals.

Respectfully submitted,

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